



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Section: 3000 and 3312	NCR Number: 23-09	Publication Date: September 8, 2023	Effective Date: To Be Determined
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3000 and 3312 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding the stacking of Rules Violation Reports.

PUBLIC COMMENT PERIOD

The public comment period will close on **October 26, 2023**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **October 26, 2023**.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held on **October 23, 2023**, from 10:00 a.m. to 11:00 a.m. in Room 150N, located at 1515 S Street, Sacramento, CA 95811. The purpose of the hearing is to receive comments about the proposed regulations. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 05/19), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to R. Orr, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2229, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to T. Ramsey, Division of Adult Institutions, at (916) 445-8282.

Original Signed By:

TAMMY FOSS
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachment

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or department), proposes to amend Sections 3000 and 3312 in Title 15, Division 3, Chapter 1, regarding the stacking of Rules Violation Reports (RVRs).

PUBLIC COMMENT PERIOD

The public comment period begins **September 8, 2023**, and closes on **October 26, 2023**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS

Primary Contact

R. Orr
Telephone: (916) 445-2229
Regulation and Policy
Management Branch
P.O. Box 942883
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Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Program Contact

T. Ramsey
Telephone: (916) 445-8282
Division of Adult Institutions
P.O. Box 942883
Sacramento, CA 94283-0001

PUBLIC HEARING

Date and Time: **October 23, 2023 – 10:00 a.m. to 11:00 a.m.**
Place: Department of Corrections and Rehabilitation
Room 150N
1515 S Street – North Building
Sacramento, CA 95811

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the department require adoption, amendment, or repeal of regulation on an emergency basis.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The department provides a graduated system of inmate discipline that is designed to be administered commensurate with the seriousness of the offense. Discipline shall be administered to maintain control, conserve human values and individual dignity, and promote desirable changes in attitude and behavior. The inmate disciplinary system incorporates statutory and constitutional mandates and provides essential due process guarantees to ensure fairness and equal application.

“Stacking” refers to the practice of breaking a single event of misconduct into several offenses where there is a nexus between the offenses and assessing separate penalties for each of the offenses. Due process requires that everyone be judged and penalized by the same standard; stacking violates due process because it penalizes some inmates more than others, and therefore a regulatory change must be made to explicitly disallow stacking and provide alternate directives to ensure that stacking is not practiced.

This action will:

- Define “stacking.”
- Prohibit the stacking of RVRs and establish alternate directives.

DOCUMENTS INCORPORATED BY REFERENCE

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The proposed regulations will serve to protect the due process rights of inmates, preventing them from being unduly issued multiple RVRs when a single RVR is warranted. The department anticipates that the proposed regulations will protect the department and result in fewer lawsuits pertaining to due process violations.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern the stacking of RVRs.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None*
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small businesses because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on worker safety or the state's environment. These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the department may adopt the proposed regulations substantially as described in this Notice. If the department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text and underline indicates added or amended text.

California Code of Regulations

Title 15. Crime Prevention and Corrections

Division 3. Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

Section 3000. Definitions.

Stacking means issuing multiple RVRs to an inmate for an event that warrants a single RVR, i.e., when there is a nexus between multiple rules violations that occur as a part of a single event.

NOTE: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3007.05, 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq., 11180 and 11191, Penal Code; Sections 1132.4, 1132.8 and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Section 11007, Health and Safety Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; In re Bittaker, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Madrid v. Cate (USDC ND Cal. C90-3094 TEH); Sassman v. Brown (E.D. Cal. 2015) 99 F.Supp.3d 1223; Mitchell v. Cate, USDC ED 2:08-CV-01196-TLN-EFB; In re Garcia (2012) 202 Cal.App.4th 892; and Quine v. Beard, No. C 14-02726 JST.

Article 5. Inmate Discipline

Section 3312. Disciplinary Methods.

Subsection 3312(a) is unchanged.

New Subsection 3312(b) is adopted to read:

(b) Stacking of RVRs is prohibited. If two or more rules violations are related during a single event, the inmate shall be charged with and issued a single RVR for the most serious of the related rules violations. Other related rules violation(s) shall be noted in the RVR as supporting evidence. When staff are authoring RVRs, staff shall ensure that they are not stacking RVRs. The reviewing supervisor shall ensure that stacking of RVRs has not taken place.

Existing Subsection 3312(b) is renumbered to Subsection 3312(c) and amended to read:

~~(b)~~ (c) Chief Disciplinary Officer (CDO) Review of Disciplinary Actions. All disciplinary methods and actions shall be reviewed by the ~~chief disciplinary officer~~ CDO, who shall be the institution head or a designee not below the level of Correctional Aadministrator or Parole Aadministrator I.

Existing Subsection 3312(b)(1) is renumbered to Subsection 3312(c)(1) and amended to read:

(1) The ~~chief disciplinary officer~~ CDO shall affirm, reverse, or modify the disciplinary action ~~and/or credit forfeiture, or combine any of these actions~~. The ~~chief disciplinary officer~~ CDO may order a different action, order a different method of discipline, dismiss a charge, order a rehearing of the charge, or combine any of these actions.

Existing Subsection 3312(b)(2) is renumbered to Subsection 3312(c)(2).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or the department) proposes to amend California Code of Regulations (CCR), Title 15, Division 3, Chapter 1, Article 1, Sections 3000 and 3312 regarding the stacking of Rules Violation Reports (RVRs).

The department provides a graduated system of inmate discipline that is designed to be administered commensurate with the seriousness of the offense. Discipline shall be administered to maintain control, conserve human values and individual dignity, and promote desirable changes in attitude and behavior. The inmate disciplinary system incorporates statutory and constitutional mandates and provides essential due process guarantees to ensure fairness and equal application.

“Stacking” refers to the practice of breaking a single event of misconduct into several offenses where there is a nexus between the offenses and assessing separate penalties for each of the offenses. Due process requires that everyone be judged and penalized by the same standard; stacking violates due process because it penalizes some inmates more than others, and therefore a regulatory change must be made to explicitly disallow stacking and provide alternate directives to ensure that stacking is not practiced.

BENEFITS OF THE REGULATIONS:

The proposed regulations will serve to protect the due process rights of inmates, preventing them from being unduly issued multiple RVRs when a single RVR is warranted. The department anticipates that the proposed regulations will protect the department and result in fewer lawsuits pertaining to due process violations.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3, subdivision (b), the CDCR has made the following assessments regarding the proposed regulations:

Significant Adverse Economic Impact on Business

The department has made an initial determination the proposed regulations will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department’s initial determination. The proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

Creation of New Jobs or the Elimination of Existing Jobs within the State of California

The department has determined that the proposed regulations will not have an impact on the creation of new jobs or elimination of existing jobs within California as the proposed regulations affect the internal management of prisons only.

Creation of New Businesses or Elimination or Expansion of Existing Businesses within the State of California

The department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California, or affect the

expansion of businesses currently operating in California as the proposed regulations affect the internal management of prisons only.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The department has determined that the proposed regulations will have no impact on the health and welfare of California residents, worker safety, or the State's environment.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code Section 11346.5, subdivision (a)(13), the department must determine that no reasonable alternative is considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law as the proposed action.

Currently, no reasonable alternatives have been brought to the attention of CDCR that would alter CDCR's initial determination. This regulatory change will not adversely impact small businesses.

DOCUMENTS RELIED UPON:

In proposing amendments to these regulations, the department has not identified, nor has it relied upon, any technical, theoretical, or empirical study, report, or similar document.

LOCAL MANDATES:

The department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE SECTION 11346.2(b)(1):

Section 3000 is amended to establish the definition of "stacking." This definition is necessary for clarity, ensuring the understanding of the term "stacking."

In deciding which violation to charge an inmate with, the reviewing authority should determine whether a nexus between the violations exists. The following scenarios illustrate what constitutes an "event" and a "nexus":

Scenario 1:

At 9:00 a.m., an inmate refuses to exit the inmate's cell after receiving numerous lawful orders to do so. This would be reported as a "Refusal to Obey Orders," per CCR Section 3005(a), and would be classified as a Division F offense.

At 9:30 a.m., a decision is made to complete a cell extraction. The formation of the extraction team results in a disruption of the cell extraction. The inmate's continued refusal to exit the inmate's cell has led to the formation of the extraction team, which delays or obstructs the Peace Officers that comprise the extraction team from performing their duties. Consequently, the inmate would be charged with "Delaying

or Obstructing a Peace Officer in the Performance of Duty," per CCR Section 3005(a), which would be classified as a Division D offense.

Charging the inmate with a Division F and a Division D offense would be incorrect in this case, as the charges both result from the inmate's refusal to leave the inmate's cell. The refusal and the resulting formation of an extraction team constitute a single event. The inmate's refusal to leave the inmate's cell results in the formation of the extraction team, and that linkage constitutes a nexus between the two offenses. Therefore, the inmate shall be issued an RVR for the more serious Division D offense and the Division F offense shall be included in the RVR as supporting evidence.

Scenario 2:

At 5:00 p.m., Peace Officers conduct a search of an inmate's cell. This cell search constitutes a single event.

During the cell search, Peace Officers found a syringe and a bundle of heroin. There is a nexus between these items, as the inmate would have needed the syringe to inject the heroin. The inmate would be issued an RVR for possessing the heroin and the possession of the syringe would be included in the RVR as evidence. The bundle of heroin would be reported as "Possession of a controlled substance in an institution," per CCR Section 3016(b), and would be classified as a Division B offense. The syringe would be reported as "Unauthorized possession of drug paraphernalia," per CCR Section 3016(c), and would be classified as a Division C offense.

Charging the inmate with a Division B and a Division C offense would be incorrect in this case, as the charges both result from the inmate's cell being searched. The cell search and the discovery of a syringe and bundle of heroin are considered a single event. There is a linkage between the heroin and the syringe in that the latter would be used to inject the former, and that linkage constitutes a nexus between the two offenses. Therefore, the inmate shall be issued an RVR for the more serious Division B offense and the Division C offense shall be included in the RVR as supporting evidence.

If a cell phone and a syringe had been found during the cell search, however, no nexus would exist between the two and two RVRs would therefore be issued. The cell phone would be reported as "Possession of a cellular telephone," per CCR Section 3006(a), and would be classified as a Division D offense. The syringe would be reported as "Unauthorized possession of drug paraphernalia," per CCR Section 3016(c), and would be classified as a Division C offense.

Charging the inmate with a Division D and a Division C offense would be correct in this case. The cell search and the discovery of a syringe and a cell phone are considered a single event. However, a syringe and cell phone were discovered, and there is no nexus between the two offenses. Therefore, the inmate shall be issued two RVRs, one for the Division D offense and one for the Division C offense.

New Subsection 3312(b) is adopted to establish the correct way of issuing an RVR when there is a nexus between multiple rules violations that occur as a part of a single event. This subsection will assist in the department's efforts to protect the due process rights of inmates by establishing the prohibition of stacking. By requiring that a staff

member issue an RVR for the most serious of the related rules violations when there is a nexus between multiple rules violations that occur as a part of a single event, with the other related rules violation(s) being noted in the RVR as supporting evidence, the department shall ensure that an inmate's due process rights are protected in that it will not charge an inmate with multiple RVRs when only one RVR is warranted. The reviewing supervisor will be responsible for ensuring that staff adhere to the provisions of this subsection when issuing RVRs, thereby helping to ensure that no due process violations occur through stacking. For information about what constitutes an "event" and a "nexus," see the justification for the amendment to Section 3000.

Existing Subsection 3312(b) is renumbered to Subsection 3312(c) and is amended to make non-substantive grammatical changes, i.e., establishing an acronym and capitalizing the names of titles.

Existing Subsection 3312(b)(1) is renumbered to Subsection 3312(c)(1) and is amended to make the non-substantive grammatical addition of an established acronym.

Existing Subsection 3312(b)(2) is unchanged and renumbered to 3312(c)(2).